SUPREME COURT, U. S.

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No. 120

IN THE

Supreme Court of the United States

October Term, 1965

CHEYENNE RIVER SIOUX TRIBE OF INDIANS, *Petitioner*

v.

UNITED STATES OF AMERICA AND
PETER HIATT, *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WILLIAM HOWARD PAYNE
1086 National Press Building
Washington, D. C. 20004
Counsel for Petitioner

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The respondent United States in its Memorandum in Opposition makes much of the argument that "The agreement embodied in the statute provides that the condemnation suit is to be brought and prosecuted by the United States against the complaining individual landowner. No provision was made for the Tribe's participation in the litigation. As a party to this agreement, the Tribe is bound by it." This argument completely overlooks the fact that the agreement with the Tribe, Public Law 776, 83rd Congress, 68 Stat. 1191, merely established the procedure to be followed ("by procedure corresponding to a condemnation proceeding") and did not deny the Tribe, from whose funds any judgment was to be paid, the right to participate in the action.

In the case of Creek Nation v. United States, 318 U.S. 629, an action was brought by the Creek Nation based

on the contention that the United States had breached its obligation as a guardian of its Indian wards in failing to collect certain sums from railroads which had committed assorted misdeeds. Section 15 of the Act of February 28, 1902, provided that the Tribes through whose land the roads were to be built should be compensated by the railroads for the lands taken. The section established a system of valuation under judicial supervision and with a right of appellate review. Section 16 of the Act provided that the sums should be paid by the railroad company to the Secretary of the Interior for the benefit of the particular Tribe or nation through whose lands the railroad was constructed. Certain of the railroads did not pay and the United States did not bring suit. This Court, in holding against the Tribes stated "That the government did not mean to assume an insurer's responsibility for the payment of sums claimed by the Indians against the railroads is further shown by the fact that the Indians retained their own independent remedy for wrongs done them. The tribes have not yet been dissolved, and they have had, both as a general legal right, and by virtue of the very section of the 1902 Act under discussion here, the power to bring actions on their own behalf. That the United States also had a right to sue did not necessarily preclude the tribes from bringing their own actions."

Recognizing their general legal right, how much stronger is the case for the Cheyenne River Sioux Tribe of Indians to be represented in view of the arm's length negotiations leading to Public Law 776, and in view also of the Indian Reorganization Act.

In the case of Farm Security Administration v. Herren, 165 F. 2d 554 (1948), involving an action against the United States, the Eighth Circuit stated "...And it is a well established principle of contract law that those who are parties to a contract and are bound by it are to

be ascertained by an inspection of the document and its provisions are controlling in the absence of some positive rule of law or provision of statute requiring them to be disregarded", citing United States v. Algoma Lumber Co., 305 U.S. 415, 59 S.Ct. 267, 83 L.Ed. 260.

In the instant case, if we inspect Public Law 776, we find that it is a contract between the United States and the Cheyenne River Sioux Tribe of Indians and that the Tribe would be bound by any judgment rendered in a proceeding "corresponding to a condemnation proceeding." Thus, the Tribe, being a party to a contract, and being bound by any judgment relative thereto should have been joined as an indispensable party.

For the foregoing reasons, and those stated in the Petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

William Howard Payne
1086 National Press Building
Washington, D. C. 20004
Counsel for Petitioner

September 30, 1965

END